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9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2022-088916

14 **Bryce Andrew Morton, M.D.**
15 **30806 Crystallaire Drive**
Temecula, CA 92591-3913

A C C U S A T I O N

16 **Physician's and Surgeon's**
17 **Certificate No. G 75727,**

Respondent.

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19
20 **PARTIES**

21 1. Reji Varghese (Complainant) brings this Accusation solely in his official capacity as
22 the Interim Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about December 14, 1992, the Medical Board issued Physician's and Surgeon's
25 Certificate No. G 75727 to Bryce Andrew Morton, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on June 30, 2024, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2228.1 of the Code states.

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board and the Podiatric Medical Board of California shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information internet web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

1 (A) The commission of any act of sexual abuse, misconduct, or relations with a
patient or client as defined in Section 726 or 729.

2 (B) Drug or alcohol abuse directly resulting in harm to patients or the extent
3 that such use impairs the ability of the licensee to practice safely.

4 “...”

5 (2) An accusation or statement of issues alleged that the licensee committed any
6 of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a
7 stipulated settlement based upon a nolo contendere or other similar compromise that
does not include any prima facie showing or admission of guilt or fact but does
include an express acknowledgment that the disclosure requirements of this section
would serve to protect the public interest.

8 (b) A licensee required to provide a disclosure pursuant to subdivision (a) shall
9 obtain from the patient, or the patient’s guardian or health care surrogate, a separate,
signed copy of that disclosure.

10 (c) A licensee shall not be required to provide a disclosure pursuant to
11 subdivision (a) if any of the following applies:

12 (1) The patient is unconscious or otherwise unable to comprehend the
disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a
13 guardian or health care surrogate is unavailable to comprehend the disclosure and
sign the copy.

14 (2) The visit occurs in an emergency room or an urgent care facility or the visit
15 is unscheduled, including consultations in inpatient facilities.

16 (3) The licensee who will be treating the patient during the visit is not known to
the patient until immediately prior to the start of the visit.

17 (4) The licensee does not have a direct treatment relationship with the patient.

18 (d) On and after July 1, 2019, the board shall provide the following
19 information, with respect to licensees on probation and licensees practicing under
probationary licenses, in plain view on the licensee’s profile page on the board’s
20 online license information internet web site.

21 (1) For probation imposed pursuant to a stipulated settlement, the causes
alleged in the operative accusation along with a designation identifying those causes
22 by which the licensee has expressly admitted guilt and a statement that acceptance of
the settlement is not an admission of guilt.

23 (2) For probation imposed by an adjudicated decision of the board, the causes
24 for probation stated in the final probationary order.

25 (3) For a licensee granted a probationary license, the causes by which the
probationary license was imposed.

26 (4) The length of the probation and end date.

27 (5) All practice restrictions placed on the license by the board.

28 (e) Section 2314 shall not apply to this section.

1 6. Section 2234 of the Code, states:

2 The board shall take action against any licensee who is charged with
3 unprofessional conduct. In addition to other provisions of this article, unprofessional
4 conduct includes, but is not limited to, the following:

5 (a) Violating or attempting to violate, directly or indirectly, assisting in or
6 abetting the violation of, or conspiring to violate any provision of this chapter.

7 (b) Gross negligence.

8 (c) Repeated negligent acts. To be repeated, there must be two or more
9 negligent acts or omissions. An initial negligent act or omission followed by a
10 separate and distinct departure from the applicable standard of care shall constitute
11 repeated negligent acts.

12 (1) An initial negligent diagnosis followed by an act or omission medically
13 appropriate for that negligent diagnosis of the patient shall constitute a single
14 negligent act.

15 (2) When the standard of care requires a change in the diagnosis, act, or
16 omission that constitutes the negligent act described in paragraph (1), including, but
17 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
18 licensee's conduct departs from the applicable standard of care, each departure
19 constitutes a separate and distinct breach of the standard of care.

20 (d) Incompetence.

21 (e) The commission of any act involving dishonesty or corruption that is
22 substantially related to the qualifications, functions, or duties of a physician and
23 surgeon.

24 (f) Any action or conduct that would have warranted the denial of a certificate.

25 (g) The failure by a certificate holder, in the absence of good cause, to attend
26 and participate in an interview by the board. This subdivision shall only apply to a
27 certificate holder who is the subject of an investigation by the board.

28 7. Section 2236 of the Code states:

 (a) The conviction of any offense substantially related to the qualifications,
 functions, or duties of a physician and surgeon constitutes unprofessional conduct
 within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record
 of conviction shall be conclusive evidence only of the fact that the conviction
 occurred.

 (b) The district attorney, city attorney, or other prosecuting agency shall notify
 the Medical Board of the pendency of an action against a licensee charging a felony
 or misdemeanor immediately upon obtaining information that the defendant is a
 licensee. The notice shall identify the licensee and describe the crimes charged and
 the facts alleged. The prosecuting agency shall also notify the clerk of the court in
 which the action is pending that the defendant is a licensee, and the clerk shall record
 prominently in the file that the defendant holds a license as a physician and surgeon.

 (c) The clerk of the court in which a licensee is convicted of a crime shall,

1 within 48 hours after the conviction, transmit a certified copy of the record of
2 conviction to the board. The division may inquire into the circumstances surrounding
3 the commission of a crime in order to fix the degree of discipline or to determine if
4 the conviction is of an offense substantially related to the qualifications, functions, or
5 duties of a physician and surgeon.

6 (d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
7 deemed to be a conviction within the meaning of this section and Section 2236.1.
8 The record of conviction shall be conclusive evidence of the fact that the conviction
9 occurred.

10 8. Section 2237 of the Code states:

11 (a) The conviction of a charge of violating any federal statutes or regulations or
12 any statute or regulation of this state, regulating dangerous drugs or controlled
13 substances, constitutes unprofessional conduct. The record of the conviction is
14 conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a
15 conviction following a plea of nolo contendere is deemed to be a conviction within
16 the meaning of this section.

17 (b) Discipline may be ordered in accordance with Section 2227 or the Medical
18 Board may order the denial of the license when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal, or when an order granting
20 probation is made suspending the imposition of sentence, irrespective of a subsequent
21 order under the provisions of Section 1203.4 of the Penal Code allowing such person
22 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
23 the verdict of guilty, or dismissing the accusation, complaint, information, or
24 indictment.

25 9. Section 2238 of the Code states:

26 A violation of any federal statute or federal regulation or any of the statutes or
27 regulations of this state regulating dangerous drugs or controlled substances
28 constitutes unprofessional conduct.

10 10. Section 2239 of the Code states:

11 (a) The use or prescribing for or administering to himself or herself, of any
12 controlled substance; or the use of any of the dangerous drugs specified in Section
13 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
14 or injurious to the licensee, or to any other person or to the public, or to the extent that
15 such use impairs the ability of the licensee to practice medicine safely or more than
16 one misdemeanor or any felony involving the use, consumption, or
17 self-administration of any of the substances referred to in this section, or any
18 combination thereof, constitutes unprofessional conduct. The record of the
19 conviction is conclusive evidence of such unprofessional conduct.

20 (b) A plea or verdict of guilty or a conviction following a plea of nolo
21 contendere is deemed to be a conviction within the meaning of this section. The
22 Medical Board may order discipline of the licensee in accordance with Section 2227
23 or the Medical Board may order the denial of the license when the time for appeal has
24 elapsed or the judgment of conviction has been affirmed on appeal or when an order
25 granting probation is made suspending imposition of sentence, irrespective of a
26 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
27 such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
28 setting aside the verdict of guilty, or dismissing the accusation, complaint,

information, or indictment.

11. Section 2266 of the Code states: The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

12. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

13. Section 820 of the Code states:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

14. Section 822 of the Code states:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing section shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

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1 15. Unprofessional conduct under Business and Professions Code section 2234 is conduct
2 which breaches the rules or ethical code of the medical profession, or conduct which is
3 unbecoming a member in good standing of the medical profession, and which demonstrates an
4 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
5 575.)

6 COST RECOVERY

7 16. Business and Professions Code section 125.3 states that:

8 (a) Except as otherwise provided by law, in any order issued in resolution of a
9 disciplinary proceeding before any board within the department or before the
10 Osteopathic Medical Board upon request of the entity bringing the proceeding, the
11 administrative law judge may direct a licensee found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
13 investigation and enforcement of the case.

14 (b) In the case of a disciplined licentiate that is a corporation or a partnership,
15 the order may be made against the licensed corporate entity or licensed partnership.

16 (c) A certified copy of the actual costs, or a good faith estimate of costs where
17 actual costs are not available, signed by the entity bringing the proceeding or its
18 designated representative shall be prima facie evidence of reasonable costs of
19 investigation and prosecution of the case. The costs shall include the amount of
20 investigative and enforcement costs up to the date of the hearing, including, but not
21 limited to, charges imposed by the Attorney General.

22 (d) The administrative law judge shall make a proposed finding of the amount
23 of reasonable costs of investigation and prosecution of the case when requested
24 pursuant to subdivision (a). The finding of the administrative law judge with regard
25 to costs shall not be reviewable by the board to increase the cost award. The board
26 may reduce or eliminate the cost award, or remand to the administrative law judge if
27 the proposed decision fails to make a finding on costs requested pursuant to
28 subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as
directed in the board's decision, the board may enforce the order for repayment in any
appropriate court. This right of enforcement shall be in addition to any other rights
the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be
conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or
reinstate the license of any licensee who has failed to pay all of the costs ordered
under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion,
conditionally renew or reinstate for a maximum of one year the license of any
licensee who demonstrates financial hardship and who enters into a formal agreement
with the board to reimburse the board within that one-year period for the unpaid

costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes Substantially Related to Qualifications, Functions or Duties of a Physician and Surgeon)

17. Respondent has subjected his Physician's and Surgeon's Certificate No. G 75727 to disciplinary action under sections 2227 and 2234, as defined by sections 2236 and 2273, of the Code, and section 1360 of title 16 of the California Code of Regulations, in that he has been convicted of crimes substantially related to the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged herein:

18. On or about May 23, 2022, B.L., who works at U-Haul, was at work when Respondent arrived at the U-Haul location at 28781 Old Town Front Street, Temecula, CA 92590. Respondent pulled into the parking lot to drop off a rented trailer. As Respondent was backing up the trailer, Respondent struck another parked trailer. Respondent parked the rented trailer and checked out his reservation with B.L. After approximately 15 minutes, B.L. noticed Respondent was still parked in his vehicle in the U-Haul parking lot. B.L. approached Respondent, which startled Respondent. B.L. asked Respondent if everything was all right, to which Respondent replied yes. As Respondent was speaking to B.L., B.L. observed an orange syringe tip in the cheek of Respondent's mouth. Respondent had an excitable demeanor. After their verbal encounter, Respondent pulled out of the driveway of the U-Haul store.

19. On or about May 23, 2022, Officer Hansen from Riverside County Sheriff's Department received a call for a possible intoxicated driver in the area of Santiago Road and Old Town Front Street in Temecula, CA. Officer Hansen received statements from several witnesses and Riverside County Fire personnel. Officer Hansen conducted a field sobriety test on

1 Respondent and [based on his training and experience] opined that Respondent was under the
2 influence of drug(s) and impaired for the purposes of driving. Officer Hansen then placed
3 Respondent under arrest for driving under the influence of drug(s). During a subsequent search of
4 Respondent's vehicle, Officer Hansen located two glass vials. On glass vial was labeled
5 Midazolam¹ with a lot number of 186205 and the other glass vial was labeled Fentanyl.² On June
6 8, 2022, Officer Hansen executed a search warrant at Murrieta Valley Surgical Center, in
7 Wildomar, California. Officer Hansen made contact with Director of Nursing, N.A. Officer
8 Hansen was able to match the vial of Midazolam found inside Respondent's car at the time of the
9 DUI with the lot number of Midazolam at the facility. Officer Hansen stated that he was unable to
10 match the Fentanyl to a lot number because that specific manufacturer does not have lot numbers
11 associated with Murrieta Valley Surgical Center's medications.

12 20. On or about September 19, 2022, a criminal complaint was filed against
13 Respondent in the case entitled *The People of the State of California v. Bruce Andrew*
14 *Morton, Superior Court of California, County of Riverside*, Case No. SWF2201645,
15 charging Respondent with the following counts:

16 A. Count 1 – Above named defendant [Respondent] committed a violation
17 of Health and Safety Code section 11173, subdivision (a), a felony, in that on or about
18 and May 23, 2022, in the County of Riverside, State of California, the defendant
19 [Respondent] did willfully and unlawfully obtain and attempt to obtain, and procure
20 and attempt to procure the administration of and prescription for a controlled
21 substance, to wit: Midazolam, by fraud, deceit, misrepresentation, and subterfuge and
22 by the concealment of a material fact.

23 B. Count 2 – Above named defendant [Respondent] committed a violation
24 of Health and Safety Code section 11173, subdivision (a), a felony, in that on or about

25
26 ¹ Midazolam, sold under the brand name Versed, among others, is a controlled substance
27 [benzodiazepine] used for anesthesia and procedural sedation, and to severe agitation. It works
by inducing sleepiness, decreasing anxiety, and causing a loss of ability to create new memories.

28 ² Fentanyl is a highly potent synthetic opioid used as an analgesic.

1 May 23, 2022, in the County of Riverside, State of California, the defendant
2 [Respondent] did willfully and unlawfully obtain and attempt to obtain, and procure
3 and attempt to procure the administration of and prescription for a controlled
4 substance, to wit: Fentanyl Citrate, by fraud, deceit, misrepresentation, and subterfuge
5 and by the concealment of a material fact.

6 C. Count 3 – The above named defendant [Respondent] committed a
7 violation of Vehicle Code section 23152, subdivision (f), a misdemeanor, in that on or
8 about May 23, 2022, in the County of Riverside, State of California, the defendant
9 [Respondent] did willfully and unlawfully drive a vehicle while under the influence
10 of any drug.

11 D. Count 4 – The above named defendant [Respondent] committed a
12 violation of Health and Safety Code section 11350, subdivision (a), a misdemeanor,
13 in that on or about May 23, 2022, in the County of Riverside, State of California, the
14 defendant [Respondent] did willfully and unlawfully have in his possession a
15 controlled substance, to wit, Midazolam.

16 E. Count 5 – The above named defendant [Respondent] committed a
17 violation of Health and Safety Code section 11350, subdivision (a), a misdemeanor,
18 in that on or about May 23, 2022, in the County of Riverside, State of California, the
19 defendant [Respondent] did willfully and unlawfully have in his possession a
20 controlled substance, to wit, Fentanyl Citrate.

21 21. On or about December 22, 2022, Respondent pled guilty to Count 3 [VC 23152(f)]
22 and Count 5 [HS 11350(a)] and was sentenced to, among other terms and conditions: three (3)
23 years probation, eighty (80) days in custody, completion of 1st Offender Impaired Driver
24 Program, attendance at fifty (50) substance abuse program counseling sessions, and various fines
25 and fees.

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1 **FIFTH CAUSE FOR ACTION**

2 **(Physical or Mental Illness Affecting Competency)**

3 28. Respondent's Physician's and Surgeon's Certificate No. G 75727 is subject to action
4 under section 822 of the Code in that he suffers from a mental and/or physical illness affecting
5 competency.

6 29. On or about November 16, 2022, Respondent underwent a mental evaluation by D.S.,
7 M.D., pursuant to section 820 of the Code. On or about December 12, 2022, Dr. D.S. issued his
8 expert report and concluded, among other things, that Respondent is unable to practice medicine
9 safely without restrictions and/or limitations.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(General Unprofessional Conduct)**

12 30. Respondent has further subjected his Physician's and Surgeon's Certificate No. G
13 75727 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in
14 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
15 unbecoming of a member in good standing of the medical profession, and which demonstrates an
16 unfitness to practice medicine, as more particularly alleged in paragraphs 17 through 29, above,
17 which are hereby incorporated by reference as if fully set forth herein.

18 **PRAAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Medical Board of California issue a decision:

21 1. Revoking or suspending Physician's and Surgeon's Certificate NO. G 75727, issued
22 to Respondent Bryce Andrew Morton, M.D.;

23 2. Revoking, suspending or denying approval of Respondent Bryce Andrew Morton,
24 M.D.'s authority to supervise physician assistants and advanced practice nurses;

25 3. Ordering Respondent Bryce Andrew Morton, M.D., to pay the Board the costs of the
26 investigation and enforcement of this case, and if placed on probation, the costs of probation
27 monitoring;

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1 4. Ordering Respondent Bryce Andrew Morton, M.D., if placed on probation, to provide
2 patient notification in accordance with Business and Professions Code section 2228.1; and

3 5. Taking such other and further action as deemed necessary and proper.
4

5 DATED: MAY 04 2023

JENNA JONES FOR
REJI VARGHESE
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant